



BRITISH INDIAN OCEAN TERRITORY

**REVISED REGULATIONS OF THE
BRITISH INDIAN OCEAN TERRITORY**

**THE POLICE AND CRIMINAL
EVIDENCE ORDINANCE 2019 (CODES
OF PRACTICE) (CODE F) ORDER 2019**

CHAPTER C.11

Revised Edition

Showing the law as at 1 September 2020

Published by Authority

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This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Law Revision Ordinance 2015 and contains:

The Police and Criminal Evidence Ordinance 2019 (Codes of Practice) Order 2019 – SI No.3 of 2019

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**THE POLICE AND CRIMINAL EVIDENCE ORDINANCE
2019 (CODES OF PRACTICE) (CODE F) ORDER 2019**

CHAPTER C.11

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In exercise of the powers conferred on the Commissioner by –

(a) section 60A(1)(a) of the Police and Criminal Evidence Ordinance 2019, the Commissioner hereby issues Code F: Code of Practice on Visual Recording with Sound of Interviews with Suspects, as set out in the Schedule.

(b) section 60A(1)(b) of the Police and Criminal Evidence Ordinance 2019 the Commissioner hereby orders that when a visual recording of an interview is held by Police Officers at the police station, that visual recording is required to be held in accordance with the code set out in the Schedule, as it has effect for the time being.

SCHEDULE

POLICE AND CRIMINAL EVIDENCE ORDINANCE 2019 (PACE)

CODE F

CODE OF PRACTICE ON VISUAL RECORDING WITH SOUND OF
INTERVIEWS WITH SUSPECTS

Commencement

The contents of this code should be considered if a Police Officer decides to make a visual recording with sound of an interview with a suspect on or after 3 February 2020.

There is no statutory requirement to record interviews visually.

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1 General

- 1.0 The powers and procedures in this Code must be used fairly, responsibly, with respect for the people to whom they apply and without unlawful discrimination.
- 1.1 This Code of Practice must be readily available for consultation by Police Officers and other police staff, detained persons and persons present in the Territory.
- 1.2 The notes for guidance included are not provisions of this code. They form guidance to Police Officers and others about its application and interpretation.
- 1.3 Nothing in this Code shall be taken as detracting in any way from the requirements of the Code of Practice for the Treatment and Questioning of Persons by Police Officers (Code C).
- 1.4 The interviews to which this Code applies are set out in paragraphs 3.1 - 3.3.
- 1.5 In this code, the term “appropriate adult”, “solicitor” and “interview” have the same meaning as those set out in Code C, and in the case of a 17 year old suspect, “appropriate adult” includes the person called to fulfil that role in accordance with C paragraph 1.7(a) of Code C. The corresponding provisions and Notes for Guidance in Code C applicable to those terms shall also apply where appropriate.
- 1.6 Any reference in this Code to visual recording shall be taken to mean visual recording with sound.

2 Recording and sealing of master recordings

- 2.1 The visual recording of interviews shall be carried out openly to instil confidence in its reliability as an impartial and accurate record of the interview. [See Note 2A].
- 2.2 The camera(s) shall be placed in the interview room so as to ensure coverage of as much of the room as is practicably possible whilst the interviews are taking place.
- 2.3 The certified recording medium will be of a high quality, new and previously unused. When the certified recording medium is placed in the recorder and switched on to record, the correct date and time, in hours, minutes and seconds, will be superimposed automatically, second by second, during the whole recording. [See Note 2B].

- 2.4 One copy of the certified recording medium, referred to in this code as the master copy, will be sealed before it leaves the presence of the suspect. A second copy will be used as a working copy. [See Note 2C and 2D].

Notes for Guidance

- 2A *The interviewer will wish to arrange that, as far as possible, visual recording arrangements are unobtrusive. It must be clear to the suspect, however, that there is no opportunity to interfere with the recording equipment or the recording media.*
- 2B *In this context, the certified recording media will be of either a VHS or digital format and should be capable of having an image of the date and time superimposed upon them as they record the interview.*
- 2C *The purpose of sealing the master copy before it leaves the presence of the suspect is to establish their confidence that the integrity of the copy is preserved.*
- 2D The recording of the interview may be used for identification procedures in accordance with paragraph 3, Part (B), of Code D.

3 Interviews to be visually recorded

- 3.1 If an interviewer decides to make a visual recording with sound, these are the areas where it might be appropriate:
- a. with a suspect in respect of a designated offence [see Notes 3A and 3B];
 - b. which takes place as a result of an interviewer exceptionally putting further questions to a suspect about an offence described in sub-paragraph (a) above after they have been charged with, or informed they may be prosecuted for, that offence [see Note 3C];
 - c. in which an interviewer wishes to bring to the notice of a person, after that person has been charged with, or informed they may be prosecuted for an offence described in sub-paragraph (a) above, any written statement made by another person, or the content of an interview with another person [see Note 3D]
 - d. with, or in the presence of, a deaf or deaf/blind or speech impaired person who uses sign language to communicate;

- e. with, or in the presence of anyone who requires an “appropriate adult”; or
 - f. in any case where the suspect or their representative requests that the interview be recorded visually.
- 3.2 *Not used.*
- 3.3 The relevant officer [see Note 3E] may authorise the interviewer not to record the interview visually:
- a. where it is not reasonably practicable to do so because of failure of the equipment, or the non-availability of a suitable interview room, or recorder, and the relevant officer considers on reasonable grounds that the interview should not be delayed until the failure has been rectified or a suitable room or recorder becomes available. In such cases the relevant officer may authorise the interviewing Service Policeman to audio record the interview in accordance with the guidance set out in Code E;
 - b. where it is clear from the outset that no prosecution will ensue; or
 - c. where it is not practicable to do so because at the time the person resists being taken to a suitable interview room or other location which would enable the interview to be recorded, or otherwise fails or refuses to go into such a room or location, and the relevant officer considers on reasonable grounds that the interview should not be delayed until these conditions cease to apply. In all cases the relevant officer shall make a written record of the reasons for not taking a visual record. [See Note 3F].
- 3.4 When a person who is voluntarily attending the Police Station is required to be cautioned in accordance with Code C prior to being interviewed, the subsequent interview shall be recorded, unless the relevant officer gives authority in accordance with the provisions of paragraph 3.3 above for the interview not to be so recorded.
- 3.5 The whole of each interview shall be recorded visually, including the taking and reading back of any statement.
- 3.6 A visible illuminated sign or indicator will light and remain on at all times when the recording equipment is activated or capable of recording or transmitting any signal or information.

Notes for Guidance

- 3A *Nothing in the Code is intended to preclude visual recording at Police Officer's discretion of interviews at the Police Station with people cautioned in respect of offences not covered by paragraph 3.1, or responses made by persons after they have been charged with, or informed they may be prosecuted for, an offence, provided that this Code is complied with.*
- 3B *Attention is drawn to the provisions set out in Code C about the matters to be considered when deciding whether a detained person is fit to be interviewed.*
- 3C *Code C sets out the circumstances in which a suspect may be questioned about an offence after being charged with it.*
- 3D *Code C sets out the procedures to be followed when a person's attention is drawn after charge, to a statement made by another person. One method of bringing the content of an interview with another person to the notice of a suspect may be to play him a recording of that interview.*
- 3E *The meaning of 'relevant officer' is set out in Code E, paragraph 2.4.*
- 3F *A decision not to record an interview visually for any reason may be the subject of comment in court. The relevant officer should therefore be prepared to justify their decision in each case.*

4 The interview

(A) General

- 4.1 The provisions of Code C in relation to cautions and interviews and the Notes for Guidance applicable to those provisions shall apply to the conduct of interviews to which this Code applies.
- 4.2 Particular attention is drawn to those parts of Code C that describe the restrictions on drawing adverse inferences from a suspect's failure or refusal to say anything about their involvement in the offence when interviewed, or after being charged or informed they may be prosecuted and how those restrictions affect the terms of the caution and determine whether a special warning under sections 81C and 81D of PACE can be given.

(B) Commencement of interviews

- 4.3 When the suspect is brought into the interview room the interviewer shall without delay, but in sight of the suspect, load the

recording equipment and set it to record. The recording media must be unwrapped or otherwise opened in the presence of the suspect. [See Note 4A]

- 4.4 The interviewer shall then tell the suspect formally about the visual recording. The interviewer shall:
- a. explain the interview is being visually recorded;
 - b. give his or her name and rank, and that of any other interviewer present;
 - c. ask the suspect and any other party present (e.g. his solicitor) to identify themselves [see Note 4AB].
 - d. state the date, time of commencement and place of the interview; and
 - e. state that the suspect will be given a notice about what will happen to the recording.
- 4.5 The interviewer shall then caution the suspect, which should follow that set out in Code C, and remind the suspect of their entitlement to independent legal advice (see Code C paragraph 3.21).
- 4.6 The interviewer shall then put to the suspect any significant statement or silence (i.e. failure or refusal to answer a question or to answer it satisfactorily) which occurred before the start of the interview, and shall ask the suspect whether they wish to confirm or deny that earlier statement or silence or whether they wish to add anything. The definition of a “significant” statement or silence is the same as that set out in Code C.

(C) Interviews with persons who appear to require an interpreter

- 4.7 The provisions of Code C on interpreters for suspects who do not appear to speak or understand English, or who appear to have a hearing or speech impediment, continue to apply.

(D) Objections and complaints by the suspect

- 4.8 If the suspect raises objections to the interview being visually recorded either at the outset or during the interview or during a break in the interview, the interviewer shall explain the fact that the interview is being visually recorded and that the provisions of this Code require that the suspect’s objections shall be recorded on the visual recording. When any objections have been visually recorded or the suspect has refused to have their objections recorded, the interviewer shall say that they are turning off the

recording equipment, give their reasons and turn it off. If a separate audio recording is being maintained, the interviewer shall ask the person to record the reasons for refusing to agree to visual recording of the interview. Paragraph 3.9 of Code E will apply if the person objects to audio recording of the interview. The officer may then make a written record of the interview. If the interviewer reasonably considers they may proceed to question the suspect with the visual recording still on, the interviewer may do so. See Note 4G.

- 4.9 If, in the course of an interview, a complaint is made by the person being questioned, or on their behalf, concerning the provisions of this code or of Code C, then the interviewer shall act in accordance with Code C paragraph 12.9, and inform the custody officer. [See 4B and 4C].
- 4.10 If the suspect indicates that they wish to tell the interviewer about matters not directly connected with the offence of which they are suspected and that they are unwilling for these matters to be recorded, the suspect shall be given the opportunity to tell the interviewer about these matters after the conclusion of the formal interview.

(E) Changing the recording media

- 4.11 In instances where the recording medium is not of sufficient length to record all of the interview with the suspect, further certified recording medium will be used. When the recording equipment indicates that the recording medium has only a short time left to run, the interviewer shall advise the suspect and round off that part of the interview. If the interviewer wishes to continue the interview but does not already have further certified recording media with him, they shall obtain a set. The suspect should not be left unattended in the interview room. The interviewer will remove the recording media from the recording equipment and insert the new ones which have been unwrapped or otherwise opened in the suspect's presence. The recording equipment shall then be set to record. Care must be taken, particularly when a number of sets of recording media have been used, to ensure that there is no confusion between them. This could be achieved by marking the sets of recording media with consecutive identification numbers.

(F) Taking a break during the interview

- 4.12 When a break is to be taken during the course of an interview and the interview room is to be vacated by the suspect, the fact that a break is to be taken, the reason for it and the time shall be recorded. The recording equipment must be turned off and the recording media removed. The procedures for the conclusion of an interview set out in paragraph 4.18, below, should be followed.

- 4.13 When a break is to be a short one, and both the suspect and a Police Officer are to remain in the interview room, the fact that a break is to be taken, the reasons for it and the time shall be recorded on the recording media. The recording equipment may be turned off, but there is no need to remove the recording media. When the interview is recommenced the recording shall continue on the same recording media and the time at which the interview recommences shall be recorded.
- 4.14 When there is a break in questioning under caution, the interviewer must ensure that the person being questioned is aware that they remain under caution. If there is any doubt, the caution must be given again in full when the interview resumes. [See Notes 4D and 4E].

(G) Failure of recording equipment

- 4.15 If there is a failure of equipment which can be rectified quickly, the appropriate procedures set out in paragraph 4.12 shall be followed. When the recording is resumed the interviewer shall explain what has happened and record the time the interview recommences. If, however, it is not possible to continue recording on that particular recorder and no alternative equipment is readily available, the interview may continue without being recorded visually. In such circumstances, the procedures set out in paragraph 3.3 of this Code for seeking the authority of a relevant officer will be followed. [See Note 4F].

(H) Removing used recording media from recording equipment

- 4.16 Where used recording media are removed from the recording equipment during the course of an interview, they shall be retained and the procedures set out in paragraph 4.18 below followed.

(I) Conclusion of interview

- 4.17 Before the conclusion of the interview, the suspect shall be offered the opportunity to clarify anything he or she has said and asked if there is anything that they wish to add.
- 4.18 At the conclusion of the interview, including the taking and reading back of any written statement, the time shall be recorded and the recording equipment switched off. The master tape or Digital Media shall be removed from the recording equipment, sealed with a master copy label and treated as an exhibit. The interviewer shall sign the label and also ask the suspect and any appropriate adults or other third party present during the interview to sign it. If the suspect or third party refuses to sign the label, a relevant

officer, or if one is not available, a person more senior than the interviewer shall be called into the interview room and asked to sign it. Exceptionally, where no more senior person is available any person independent of the police force may be asked to sign the master copy label.

- 4.19 The suspect shall be handed a notice which explains the use which will be made of the recording and the arrangements for access to it. The notice will also advise the suspect that a copy of the tape shall be supplied as soon as practicable if the person is charged or informed that he will be prosecuted.

Notes for Guidance

- 4A *The interviewer should attempt to estimate the likely length of the interview and ensure that an appropriate quantity of certified recording media and labels with which to seal the master copies are available in the interview room.*
- 4AB *A solicitor is 'present' for these purposes if the solicitor is assisting the suspect during the interview by telephone link*
- 4B *Where the custody officer is called immediately to deal with the complaint, wherever possible the recording equipment should be left to run until the custody officer has entered the interview room and spoken to the person being interviewed. Continuation or termination of the interview should be at the discretion of the interviewer pending action as set out in Code C.*
- 4C *Where the complaint is about a matter not connected with this Code of Practice or Code C, the decision to continue with the interview is at the discretion of the interviewer. Where the interviewer decides to continue with the interview, the person being interviewed shall be told that the complaint will be brought to the attention of the custody officer at the conclusion of the interview. When the interview is concluded, the interviewer must, as soon as practicable, inform the custody officer of the existence and nature of the complaint made.*
- 4D *In considering whether to caution again after a break, the interviewer should bear in mind that he may have to satisfy a court that the person understood that he was still under caution when the interview resumed.*
- 4E *The interviewer should bear in mind that it may be necessary to satisfy the court that nothing occurred during a break in an interview or between interviews which influenced the suspect's recorded evidence. On the re-commencement of an interview, the interviewer should consider summarising on the tape or Digital*

Media the reason for the break and confirming this with the suspect.

4F If any part of the recording media breaks or is otherwise damaged during the interview, it should be sealed as a master copy in the presence of the suspect and the interview resumed where it left off. The undamaged part should be copied and the original sealed as a master tape in the suspect's presence, if necessary after the interview. If equipment for copying is not readily available, both parts should be sealed in the suspect's presence and the interview begun again.

4G The interviewer should be aware that a decision to continue recording against the wishes of the suspect may be the subject of comment in court.

5 After the Interview

5.1 The interviewer shall make a note in his or her notebook of the fact that the interview has taken place and has been recorded, the time it commenced, its duration and date and the identification number of the master copy of the recording media.

5.2 Where no proceedings follow in respect of the person whose interview was recorded, the recording media must nevertheless be kept securely in accordance with paragraph 6.1 and Note 6A.

6 Master Copy Security

(A) General

6.1 The Chief of Police shall make arrangements for the master copies to be kept securely and their movements accounted for on the same basis as other material which may be used for evidential purposes [See Note 6A].

(B) Breaking master copy seal for proceedings

6.2 Police officers have no authority to break the seal on a master copy which is required for criminal trial or appeal proceedings. If it is necessary to gain access to the master copy, the Police Officer shall arrange for its seal to be broken in the presence of the Logistics Officer. The defendant or their legal adviser shall be informed and given a reasonable opportunity to be present. If the defendant is present he shall be invited to re-seal and sign the master copy. If he refuses or is not present, this should be done by the Logistics Officer. [See Notes 6B and 6C].

(C) Breaking master copy seal: other cases

- 6.3 The Principal Legal Adviser is responsible for establishing arrangements for breaking the seal of the master copy where no proceedings result, or the criminal proceedings, to which the interview relates, have been concluded and it becomes necessary to break the seal. These arrangements should be those which the Principal Legal Adviser considers are reasonably necessary to demonstrate to the person interviewed and any other party who may wish to use or refer to the interview record that the master copy has not been tampered with and that the interview record remains accurate. [See Note 6D]
- 6.4 Subject to paragraph 6.6, a representative of each party must be given a reasonable opportunity to be present when the seal is broken, the master copy copied and resealed.
- 6.5 If one or more of the parties is not present when the master copy seal is broken because they cannot be contacted or refuse to attend or paragraph 6.6 applies, arrangements should be made for the Logistics Officer, to be present. Alternatively, or as an additional safeguard, arrangements should be made for a film or photographs to be taken of the procedure.
- 6.6 Paragraph 6.5 does not require a person to be given an opportunity to be present when:
- a. it is necessary to break the master copy seal for the proper and effective further investigation of the original offence or the investigation of some other offence; and
 - b. the Police Officer in charge of the investigation has reasonable grounds to suspect that allowing an opportunity might prejudice any such investigation or proceedings which may be brought as a result or endanger any person. [See Note 6E]

(D) Documentation

- 6.7 When the master copy seal is broken, copied and re-sealed, a record must be made of the procedure followed, including the date, time and place and persons present.

Notes for Guidance

- 6A This Section is concerned with the security of the master copy which will have been sealed at the conclusion of the interview. Care should, however, be taken of working copies since their loss

or destruction may lead unnecessarily to the need to have access to master copies.

- 6B If the master copy has been delivered to the Court for its keeping after referral for trial the prosecutor will apply to the Court for its release for unsealing by the prosecutor.
- 6C Reference to the prosecutor in this part of the Code shall be taken to include the Principal Legal Adviser and any person acting under the directions of the Principal Legal Adviser.
- 6D The most common reasons for needing access to master copies that are not required for proceedings arise from civil actions and complaints against the police and civil actions between individuals arising out of allegations investigated by Police Officers.
- 6E Paragraph 6.6 could apply, for example, when one or more of the outcomes or likely outcomes of the investigation might be: (i) the prosecution of one or more of the original suspects, (ii) the prosecution of someone previously not suspected, including someone who was originally a witness; and (iii) any original suspect being treated as a prosecution witness and when premature disclosure of any police action, particularly through contact with any parties involved, could lead to a real risk of compromising the investigation and endangering witnesses.
